

Laws and Rules Governing Building and Development

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A DDES Customer Information Bulletin



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<http://www.metrokc.gov/ddes/>

Frequently Asked Questions

King County DDES has created customer information bulletins to inform the general public about the effect of codes and regulations on their projects. These bulletins are not intended to be complete statements of all laws and rules and should not be used as substitutes for them. If conflicts and questions arise, current codes and regulations are the final authority. Because the codes and regulations may be revised or amended at any time, consult King County staff to be sure you understand all requirements before beginning work. It is the applicant's responsibility to ensure that each project meets all requirements of applicable codes and regulations.

What is the purpose of the Department of Development and Environmental Services?

The Department of Development and Environmental Services (DDES) is a permit processing and land use agency. As such, it is directed by laws and rules enacted by legislative and administrative bodies at the local, state, and federal levels. For example, County ordinances are written into code, or law, and govern certain activities at the local level. It is the responsibility of DDES to ensure that applications for building and development permits, as well as other land use applications, comply with County code and other laws originating at different levels of government.

The laws and rules often require interpretation, in addition to implementation and enforcement, by DDES. This bulletin explains the County's process for code development and rulemaking, the role of code interpretation by DDES, and the distinction between an agency's internal procedures and the laws or rules that govern it.

Introduction

Each level of government has a similar hierarchy of law. The "separation of powers" doctrine ensures that each branch of government has a separate function that acts as a check, or balance, to the other. The legislative branch enacts statutes or ordinances, and the executive branch promulgates administrative rules. Promulgation (defined as "to make known, especially by public declaration") includes the public process by which an administrative agency adopts administrative rules.

On the national level, Congress enacts statutes, or public laws, which are codified in the United States Code (USC). The federal administrative agencies, functioning as part of the executive branch, promulgate administrative rules that are compiled in the Code of Federal Regulations (CFRs).

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On the Washington State level, the Washington legislature passes statutes that are codified in the Revised Code of Washington (RCW). The state administrative agencies promulgate rules that are compiled in the Washington Administrative Code (WAC).

At the local level, the Metropolitan King County Council (the County's legislative branch) adopts ordinances that are codified in the King County Code (KCC). Administrative agencies, such as DDES, promulgate administrative rules that are kept in the agency's rules manual. The rules are also filed with the Clerk of the Council, whose office is located in the King County Courthouse.

The following discussion describes the relationship between legislation and administrative rules and sets forth the authority and/or limitations of each, focusing on King County. Implementation of regulations is also discussed, as well as agency interpretations and internal procedures.

Legislation

County business, which includes the permit application process administered by DDES, is governed by ordinances adopted by the King County Council and enacted by the County Executive. Operating as the legislative branch, the Council adopts ordinances that are codified in the KCC. The ordinances and codes comprise the law that governs County business.

When the Council adopts ordinances into law, it sets forth the broad policies and standards that are to be implemented in the County. These ordinances and public policies are generally motivated by public concern about protecting the quality of life in the region. Some examples include the following:

- ◆ The Council decided it would be the policy of King County to increase protection of wetlands and other sensitive areas, as well as to increase protection of the public and its resources from injury and property damage that could result from flooding, erosion, and other natural hazards. The Council made this policy law by adopting the Sensitive Areas Ordinance (Ordinance 9614), which became effective on November 27, 1990, and has been amended several times since then. This is now codified in Title 21A of the KCC.
- ◆ The Council developed policies to ensure that school districts would have enough capacity to serve an increasing student population generated by new residential development in King County. On November 18, 1991, the Council adopted the School Mitigation and Impact Fee Ordinance (Ordinance 10162) to establish concurrency standards and impact fees for public school districts. The ordinance became effective December 12, 1991, and is codified in KCC 27.44.

All legislative bodies operate within certain parameters, or limitations. These limitations are placed on the Council's legislative process. For example, it cannot pass laws that conflict with the following:

- ◆ The County Charter (or constitution)
- ◆ State or federal laws, including state and federal constitutions

Within DDES, the Code Development Coordinator and various staff members research, write, and transmit legislation, proposed by the Executive, to the Council members for their consideration. This legislation relates to titles in KCC that pertain to the work done at DDES, such as permit review and processing, environmental review, etc.

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What are Administrative Rules (also known as Public Rules)?

In County government, administrative agencies such as DDES promulgate administrative rules that implement policies contained in legislation such as ordinances. Ordinances set forth broad outlines for regulation and give the agency power to adopt more specific rules to carry out the objectives of the ordinances. The responsibility for promulgating rules falls to the agency with the technical expertise necessary to implement legislative policies. This division of labor is consistent with the separation of powers doctrine described in the introduction to this bulletin.

Ordinances are considered to be enabling legislation, authorizing agencies such as DDES to promulgate administrative rules. KCC 2.98 gives County agencies general authority to promulgate rules and outlines the minimum requirements, or procedures, for promulgation. KCC 2.98 also provides that penalties can only be created by ordinances, not rules. Once promulgated, administrative rules have the force and effect of law.

What limitations are placed on County agencies such as DDES in promulgating administrative rules?

- ◆ DDES cannot promulgate rules except to implement County ordinances. For example, DDES has no authority to implement state laws (WACs or RCWs) and cannot create rules where the King County Council has not first set policy in a properly adopted ordinance.
- ◆ Any rules promulgated by DDES cannot exceed the authority given it in the enabling ordinance, nor can the rules conflict with any ordinance.

DDES promulgates rules in consultation with the County's Prosecuting Attorney. An administrative rule may be challenged by an individual who is "affected by it" if that person can prove that the rule does any of the following:

- ◆ Conflicts with statutory or constitutional authority
- ◆ Goes beyond the agency's statutory authority
- ◆ Has no justifiable basis
- ◆ Was not properly promulgated

Administrative rules generally provide specific criteria to guide DDES in making decisions during the permit process. For example, KCC 19.04 contains broad provisions or requirements concerning what is known as a "separate lot," generally referred to when a piece of property is subdivided. The administrative rules for "separate lot" (Chapter 19-04) were later written to define the requirements for separate lot and to discuss circumstances associated with it.

Another example is the administrative rule (Chapter 20-44) written for SEPA consultant selection. This rule implements the environmental impact statement (EIS) selection provisions of KCC 20.44.130 for private development purposes. The rule defines and gives qualifications and disqualifications for EIS consultants, lists the limitations of consultants and subconsultants, specifies requirements for the creation of a list of consultants, gives selection procedures, and outlines the procedures for payment.

The concept of the County's administrative, or public, rules is derived from the Federal Administrative Procedures Act - the federal law upon which KCC 2.98 is based. According to federal law, the intent of a rule is to implement, interpret, or prescribe law or policy. Regarding the rulemaking process, KCC 2.98.010 provides for the

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establishment of formal procedures through which ordinances adopted by the County Council and enacted by the County Executive are translated into sets of specific requirements that are carried out and enforced by County agencies.

KCC 2.98.020 broadly defines a rule as “any agency order, directive or regulation of general applicability” that does any the following:

- ◆ Results in a violation for noncompliance
- ◆ Involves payment of a fee
- ◆ Pertains to hearing requirements
- ◆ Pertains to standards for permits and licenses

Generally, the definition of an administrative rule is interpreted to include any requirement or standard that directly affects the public in general. Rules are distinguished from internal agency processes or procedures (see below).

The promulgation process for administrative rules, as required in KCC 2.98, guarantees a democratic process for lawmaking. The process includes a notice published in the newspaper and a public comment period. Sometimes the public notice and the comment period are combined with the similar notice and comment period required for SEPA (State Environmental Policy Act), for purposes of efficiency and cost-savings to the public. This combination occurs when the proposed rules are subject to SEPA review.

DDES’ normal procedure is to allow written comments about rules; however, the agency has the discretion to allow for oral comments presented in a public meeting. The rules become effective 30 days after they are filed with the Clerk of the Council. There are provisions for emergency rulemaking, although DDES normally does not use this process. Emergency rules are effective for only 90 days.

What interpretations are possible?

When a code or provision is “vague, conflicting, or complex” (as defined in the King County Zoning Code), an administrative interpretation is required. For example, the Sensitive Areas Ordinance (SAO), which is codified in Title 21A of the KCC, restricts development or other activities in sensitive areas such as wetlands or streams. A few years ago, a formal code interpretation was required for the following question:

Question: Is a Native American tribe’s occasional hand-gathering of medicinal plants in a wetland area subject to the SAO?

Answer: Staff at DDES decided that “the occasional gathering by hand of medicinal plants is an activity so limited in intensity that it does not constitute either a wetland ‘alteration’ that would be subject to SAO regulation or a ‘land use’ requirement authorized in a particular zone.”

KCC 2.98 requires that formal administrative interpretations be filed with the Clerk of the Council.

What internal procedures exist?

Internal procedures include those processes by which an agency does its job internally. They do not include standards that apply to the public or requirements placed on the public. For example, Site Development Services

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staff members at DDES conduct reviews and site visits to ensure that projects comply with the provisions of the SAO. However, the procedures used by the staff to implement and enforce the ordinance are internal and are subject to change within the agency. Another example is the administration of financial guarantees. The King County Code requires financial guarantees (FGs) for some processes involved in applications for building and development projects. The Financial Guarantee Management Unit (FGMU) of DDES carries out the provisions for FGs. The procedures for administering the FGs and the ways information about FGs is given to the public are derived within the agency.

Internal procedures are not law; therefore, they do not have the force and effect of law, as do administrative rules. They are not subject to public review, and they can be changed, as needed, without notice to the public. This is possible because the agency's internal procedures do not directly affect the rights and responsibilities of the public. In this way, the administrative agency is able to create and alter its processes to achieve its various lawful purposes, as well as to create greater efficiency, internally. Internal procedures may be written and included in manuals for ease in training staff and to provide consistency among staff who do the same or similar jobs.

Where can you get help?

If you have a question about the content of this bulletin, or specific questions concerning adopted or pending regulations, contact the Code Development Coordinator at DDES at 206-296-6612 between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday.



King County complies with the Americans with Disabilities Act (ADA). If you require an accommodation to attend a meeting (two weeks' notice) or require this information in Braille, audiocassette, or large print, please call 206-296-6693 or TTY 206-296-7217.